1943

File No. Def of II/42

Legal Department-

B BRANCH

K

Subject:—

Defence of India Act, 1939

Rules and Notifications

under

Pt. I

Pt II/45

Office of the R.L.A.

Under clause 4 of the Sugar Control Order, 1942, issued under rule 81(2) of the Defence of India Rules, the Controller is given power to prohibit or limit to such quantities as may be specified in the order the manufacture by any producer or by producers generally of such types or grades of sugar or sugar products as the order may specify. In exercise of the powers conferrred by the said clause 4 the Assistant Sugar Controller for India to whom powers under the said clause have been delegated by the Controller passed an order No. 5-SC(2)42, dated 28th October 1942 prohibiting the manufacture of Bura and Sugar Candy upto the 31st December 1942 without a special permit granted by him. On 28th November 1942, the Assistant Controller passed an order under the said clause 4 of the Sugar Control Order permitting the manufacture of Sugar Candy and Bura Sugar from 1st December 1942 to the extent required in connection with the experiments being carried on by the Director of the Imperial Institute of Sugar Technology. In the meantime the Government of Bombay acting under rule 81(2) under which the Sugar Control Order has been passed issued orders No.30(b), dated 27th October 1942 and No. 318, dated 27th November 1942, directing that no person shall produce Sugur-Candy or Bura Sugar in the Province of Bombay except under and in accordance with the conditions of a license granted by the Director of Civil Supplies, Bombay. The question reference to the Remembrancer of Legal Affairs for opinion is whether the order of the Government of Bombay requiring persons to take out a license for the manufacture of sugar-candy and Bura subject to conditions will conflict with the order of the Assistant Sugar Controller under which certain factories have been permitted to manufacture the same to a certain extent.

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2. Under the order passed by the Assistant Sugar Controller for India the manufacture of Sugar-candy and Bura is permitted upto a certain extent but there are no other restrictions imposed on their manufacture. Under the orders issued by the Government of Bombay no person is allowed to produce Sugar-Candy or Bura except under and in accordance with the conditions of a license granted by the Director of Civil Supplies. It is true that if a license is granted to a factory under these orders to ~~xxx~~ manufacture sugar-candy or Bura or both, there will be no conflict between the orders passed by the Assistant Controller of Sugar and the Government of Bombay, but if while granting the license any conditions are imposed upon the licensee which he is not required to fulfil under the permit granted by the Assistant Controller of Sugar, the orders of the Government of Bombay will to that extent be ~~xx~~ inconsistent with the order of the Assistant Controller of Sugar. To resolve any possible conflict between the two orders i.e. the order passed by the Government of Bombay and the Assistant Controller of Suguar, it would be desirable for the Government of Bombay to amend their own orders. From the correspondence passed between the Sugar Controller and this Government (pp. 60-64 in G.D. File No.30(b)) it appears that the intention is that the orders passed by the Sugar Controller are to apply only to producers who are factories within the definition of clause 2(d) of the Sugar Control Order, 1942. If so, the order passed by the Government of Bombay may be amended so as to exempt such producer factories from the operation of the same. It is suggested that the orders may be amended in consultation with the Sugar Controller. Multiple control of the same subject, by authorities possessing concurrent but uncoordinated jurisdiction, should, in relation to the same

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case or class of cases, be avoided in the interest of the public as also of administration.

Id/- P.N.M.
6/1.

Remembrancer of Legal Affairs.

U.R. to H F.D. (Supply) No. 134, dated the 7th Jan. 1943.

4-Cs.

M.V.V.
6/7.

Office of the R.L.A.

A revised draft Order is sent herewith.

2. The F.D. draft at pages 7-8 ante defines a fair price shop as a shop established for the retail sale of foodgrains and managed and controlled by Government. It is not clear what F.D. means by a shop controlled by Government. The definition might include all shops to which orders passed by Government under rule 81(2) of the Defence of India Rules regarding fixing of maximum prices etc. would apply. But it seems hardly to be the intention to bring within the definition all these shops. The definition proposed by F.D. is vague and has therefore been revised. F.D. should consider whether the revised definition will be suitable.

3. The effect of the proposed order will be that a licensee will be precluded from purchasing articles from the fair price shop not only for the purpose of trade but also for his personal consumption. Further he will be precluded from purchasing from the shop not only the articles stocked by him but also the articles of which he holds no stocks. F.D. should consider whether this is the intention of Government.

Id/- P.N.M.
15/1.

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No. 364, dated the 15th January 1943.

4-Cs.

M.V.V.
6/7.

ORDER.

Finance Department (Supply)
Bombay Castle, 1943.

No. .- In exercise of the powers conferred by clause(a) of sub-rule (2) of rule 81 of the Defence of India Rules, the Government of Bombay is plesed to direct that no person, being the holder of a licence issued or deemed to be issued, under the Food-grains Control Order, 1942 or the Bombay Retail Trade Control and Licensing Order, 1942, shall by himself or by his agent or any other person on his behalf, purchase any article from a fair price shop.

Explanation:- A fair price shop is a shop which is managed by Government or which has been notified as such by the Provincial Government or any officer authorised by the Provincial Government in that behalf.

By order of the Governor of Bombay,

Secretary to Government.

4-Cs.

M.V.V.
6/7.

Office of the R.L.A.

The preliminary notice at page 7 ante purports to be issued as an order under sub-rule (1) of rule 51-I of the Defence of India Rules. Under that rule power is given to Government to require the owner of any premises to construct therein an air raid shelter within a specified time. In an order under sub-rule(1) of rule 51-I it would therefore be necessary to specify the time within which the owner must construct an air raid shelter. The draft order at page 7 ante does not specify any time limit but directs the owner to construct an air raid shelter within 15 days from the date of service of the final notice. Such a direction will not be in compliance with the provisions of rule 51-I(1) and will be ultra vires. To achieve the object in view the City Engineer may in the first instance issue letters or a general notice to the owners giving intimation to them that he is likely to issue an order under rule 51-I(1) requiring them to construct air raid shelters in the manner specified in the schedule at page 7 ante and inviting their suggestions, if any, as proposed in the note at page 7. After such an intimation has been given the City Engineer should issue the actual order, if and when necessary, under which he should require the owners to construct air raid shelters within a specified time in accordance with the requirements as to lay out, materials and construction which may be specified in a schedule to the order. As an order under rule 51-I(1) requires that the requirements as to lay out etc, should be specified in the order itself, item VI in the preliminary notice at page 7 ante will have to be omitted from the order. Where it is necessary to require the construction of any additional work that may be got done by amplifying the schedule to the order or by serving a separate order. Care should be taken to see that any direction unconnected with the air raid shelter such as the removal or pasting of all the glass panes

throughout the building is not included in the schedule. It is also necessary to ensure that the owner of no building is called upon to dig a slit trench in addition to the inside shelter unless the Municipal City Engineer is satisfied that such inside accomodation is not sufficient as an air raid shelter in respect of that building. It is further necessary to see that the owner is required to dig the trench only within his premises, though outside the building owned by him Attention is in this connection invited to R.L.A. 's No.189-Confl. dated the 14th May 1942.

2. It is not necessary to mention in the order that failure to comply with the order is punishable with imprisonment, as rule 51-I(4) already provides for this. Nor can an order made by the City Engineer provide that in case of default by the owner the City Engineer may cause the shelter to be constructed etc. This power of the Provincial Government under sub-rule (3) of rule 51-I has not been delegated to the Municipal City Engineer. Government Notification, Home Department (Poll-A.R.P.) No.S.D./ A.R.P. - 4866, dated the 17th April 1942 delegates only the powers under rule 51-I(1) to the Municipal City Engineer. H.D. may consider the desirability of conferring also the powers under rule 51-I(3) on the Municipal City Engineer.

3. Rule 51-I does not give power to Government to require the owner of the premises to keep any particular portion thereof in which an air raid shelter is constructed vacant or open. It will not therefore be possible to provide in the order that the owner should keep any particular shop or room completely vacant or open by day and night. A skeleton draft order is sent herewith for the consideration of the H.D.

Id/- P.N.M.
18/1.

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl) A.R.P. No. 431, dated the 19th January 1943.

4-Cs./M.V.V./6.7

Office of the R.L.A.

Although from the pure legal point of view it will be possible when compelling the sale under rule 31(2)(a) to provide how weights shall be reckoned, namely whether at the consignor's end or at the consignee's end, and to adjust the shrinkage and rail pilferage risks etc. in fixing the prices, it would not now be possible to revise the terms of the orders already served in respect of past deliveries. Mr. Greaves, however, appears to contemplate adopting the present procedure for future transactions also. In this respect, paragraph 4 of his letter at p. 63 is in conflict with paragraph 3 of his letter at p. 49, and the point is for R.D. to consider, If it is held that the procedure should continue to be adopted in future then R.D. willbe well advised to resist the amendment suggested at A on p.59 on the practical ground that in rail deliveries, weights are best fixed by the invoice weights recorded by the railway officers; that actuals at the consignee's end are difficult for the consignor to check up unless the consignor had an agent at the place of delivery; that disputes as to the amount of shrinkage against invoice weights are therefore difficult to resolve; and that vendees must take risk on this poit if sales are effected by recourse to special powers vesting in Government which compel vendors to sell against their wish.

Id/- P.N.M.
3/2.

Remembrancer of Legal Affairs.

U.R. to R.D. NO. 843, dated the 3rd February 1943.

4-Cs.

M.V.V.
6/7.

Revenue Department.
Bombay Castle, 1943.

ORDER.

No. 8312/39. - In exercise of the powers conferred by sub-rule(2) of rule 81 of the Defence of India Rules the Government of Bombay is pleased to direct that hereinafter called "the Vendor" shall sell to herein after called "the Vendee", at the price and subject to the conditions specified below all that quantity of tapioca as per invoice weights which was delivered by the vendor to the Vendee in compliance with the letter No.....dated ....addressed to the Vendor by the Deputy Director General, Cotton Textiles, Bombay ---

Price of Rs.44 per cwt. delivery free P.O.R. at Carnac. shrinkage below invoice weight not exceeding 5 per cent. being borne by the Vendee and any excess of such shrinkage over 5 per cent. being borne by the Vendor.

By order of the Governor of Bombay,

Secretary to Government.

Endorsement.

In pursuance of clause (2) of my order No.....dated..... issued in exercise of the powers under sub-rule (5) of rule 75A of the Defence of India Rules I hereby permit the disposal as above of the tapioca specified in the above Order.

Deputy Controller of Supplies.

4-Cs.

M.V.V.
6/7.

Office of the R.L.A.

In view of the draft order at p.7 requiring every occupier of a godown to declare stocks in the godown, the draft Order at p.5 requiring every owner of a godown to furnish the names of every occupier of a godown is strictly redundant. Against the dubious advantage of enabling the checking and verification of the actual occupiers of godowns must be set off the consderable wastage of paper and the additional work of scrutiny in the Supply Department which the submission of owners' returns will entail.

2. The draft Order at p.7 relates to stocks in godowns (storage accomodation) This will apply to warehouses as such and probably also to other places of storage such as store rooms in residential houses. The intention, as ascertained from the Director of Civil Supplies, appears to be to get at all the stocks hoarded whether in godowns or in residential buildings by grain dealers as x well as private hoarders. The Order at p.7 is framed in general terms requiring returns of allkt kinds of stock and would doubtless lead to enormous wastage of paper, burden of work and confusion, since almost the entire public will have to submit returns specifying stocks of all manner of articles (including articles which can have no bearing whatever on the subject in view) stored in any place of storage. Instead, therefore, of issuing the orders as proposed, the Supply Department is requested to consider the desirability of requiring the occupiers of premises to make returns as to the quantities and the places of storage in respect of stocks of specified articles (such as grain, cloth, sugar and similar essential commodities) held by them or on behalf of others in excess of specified quantities. Such an order if issued under rule 116 of the Defence of India Rules will have to be obeyed only by those who hold excess stocks of the specified articles but not by the rest of the public, nor in respect of unspecified articles. An infringement of the order wherever detected will render the undeclared stocks liable to confiscation so that

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few occupiers who ~~dt~~ hold excess stocks whether in godowns or in other places of storage will dare evade the order.

Id/- P.N.M.
4/2.

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply) No.60-Confl. dated the 4th February, 1943.

4-Cs.
M.V.V.
6/7.

Office of the R.L.A.

A revised draft order is sent herewith.

2. Under sub-rule(3) of rule 76B of the Defence of India Rules every authority granting permits has power to impose on the permit holder, such conditions as that authority thinks fit for conserving essential building materials and to revoke or modify the terms of such permits. In view of this provision it will be competent for the Brick Controller to in corporate appropriate condition in the permits granted by him. Under sub-rule (4) any person failing to comply with any conditions imposed under sub-rule (3) commits an offence. It is not therefore necessary to provide in the draft order that no person shall erect etc. any buildings except "in accordance with the conditions contained or incorporated in" a written permit; the order if so worded may bar the revocation etc. of any specified condition which the Brick Controller may wish to revoke or modify under the power given by sub-rule (3). The words "and in accordance with the conditions contained or incorporated in H.D. draft clause 2 have, therefore, been omitted.

3. Sub-clause(a) in clause 3 in the H.D. draft order provides that nothing in the order shall apply to temporary structures that are "to be dismantled within one month of commencement of their erection". It is presumed that the intention is not to reckon the period of one month from the date of the commencement of the erection of the structure but from the date on which its erection is completed. The revised draft provides accordingly.

Id/- P.N.M.
4/2.

Remembrancer of Legal Affairs.

U.R. to H.D. (Poll) A.R.P. No. 882, dated the 5th February 1943.

4-Cs.

M.V.V.
6/7.

Home Department (Political)-A.R.P.

Council Hall, Bombay,

1943.

No. In exercise of the powers conferred by sub-rule (2) of rule 76-B of the Defence of India Rules and in supersession of Government Order issued under Government Notification in the Home Department (Political) A.R.P.), No. 388-B, dated the 21st July 1942, the Government of Bombay is hereby pleased to make the following order:-

1. Short title and extent.

(1) This Order may be called the Building (Control of Construction) Order, 1943.

(2) It extends to the City of Bombay, the Bombay Suburban District and the Thana Mahal in Thana District.

2. Construction of Buildings.

No person shall erect, re-erect, construct or ~~xxxx~~ alter any building except under the authority of a written permit granted on behalf of the Government of Bombay by the Brick Controller for the Province of Bombay.

Saving

3. Nothing in this Order shall apply to -

(a) temporary structures that are to be dismantled within one month from the date of their erection.

(b) buildings vesting in His Majesty for for purposes of the Central or the Provincial Government or in a local authority.

(c) repairs not involving structural alteration, and

(d) works carried out in pursuance of any order issued under the defence of India Rules.

By order of the Governor of Bombay

Secretary to Government.

4-Ca./M.V.V./6.7

Draft Order.

In exercise of the powers conferred by clause (b) of sub-rule (2) of rule 81 of the Defence of India Rules the Government of Bombay is pleased -

(1) to relax the present maximum rates of charges per unit for the supply of electrical energy chargeable by a licensee under section 3 of the Indian Electricity Act, 1910 or a person supplying electrical energy under section 28 of the said Act in accordance with the conditions of the license or sanction, as the case may be, in cases where diesel oil is used for the generation of such energy and where the rates per unit charged by the licensee or a person on the 1st September 1942 were not less than 75 per cent of the said maximum rates, and

(2) to direct that the rates per unit chargeable by such licensee or person shall not exceed the rates per unit charged by him on the 1st September 1942 by more than 33.1/3 per cent.

By order of the Governor of Bombay,

Secretary to Government.

4-Cs.

N.V.V.
6/7.

Office of the R.L.A.

It appears that under special contracts certain electric companies have bound themselves to supply electrical energy to certain consumers (including local authorities) at special reduced rates. The companies now want to enhance those rates, as in the circumstances mentioned by them, supplying electrical energy at the reduced rates is causing them heavy losses. To meet the companies' demand Government will have to pass a separate order under rule 81(2) for permitting the companies to enhance the rates to such extent as it considers fit. Such an order will in virtue of section 3 of the Defence of India Act override the agreements under which the companies have agreed to supply electrical energy over a period at reduced rates. The order proposed by the Committee at page 15 of the P.W.D. File 6040/36 enhances the maxima rates fixed by the terms of the licences issued to the companies but the order does not alter the procedural and contractual limitations if any onthe enhancement of the actual rates. In order to overcome such limitations, a separate order or orders under rule 81(2) will be necessary; according as Government wishes to consider the positio of the companies individually or collectively.

Id/- P.N.M.
9/2.

Remembrancer of Legal Affairs.

U.R. to P.W.D.No. 997, dated the 9th February 1943.

4-Cs.

M.V.V.
6/7.

Office of the R.L.A.

The question for the R.L.A.'s consideration is whether it is possible to prohibit factories from manufacturing gur by an order under rule 81(2)(c) of the Defence of Idia Rules.

2. Clause (c) of sub-rule (2) of rule 81 of the Defence of India Rules gives power to the Government to make an order for regulating the carrying on of an undertaking engaged in or capable of doing work appearing to the Government essential to any of the purposes mentioned in the rule. It is doubtful whether the power to regulate the carrying on of an undertaking will include the power to prohibit the doing of any lawful work by an undertaking. The object in view however be achieved by making an order under clause (a) of rule 81(2). That clause gives an express power to make an order for prohibiting the productions of articles or things of any ~~the~~ description whatsoever. Such an order will in virtue of the provisions of section 3 of the Defence of India Act, 1939 override any agreements entered into by Government with factories under which the latter have any express or implied right to manufacture gur. (See R.L.A's opinion No.997, dated 9th February 1943, copy attached).

Id/- N,K.D.
10/2.

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No.1943, dated the 10th February 1943.

4-Cs.

M.V.V.
6/7.

Office of the R.L.A.

It would be desirable to issue separate notifications amending the two notifications in question. Draft notifica - tions for the purpose are sent herewith.

2. Clause 2(2) in the F.D. draft notification at p.3 ante provides that the wholesale dealers of sugar shall not withhold sugar from sale to any person on demand and on offer of such price subject to directions issued by the Director of Civil Supplies, Bombay, from time to time. It appears from the F.D.Note dated 22nd February 1943 (pp. 1-2 ante) that the object of inserting the words "subject to the directions issued by the Director of Civil Supplies" is to save conflict between the order requiring the dealers not to withhold sugar from sale to any person and any lawful orders that may be issued to the contrary. It may be that orders to the contrary may be issued not only by the Director of Civil Supplies but also by Government or any other authority to whom Govern- ment may delegate its powers under the relevant rules and not only against wholesale dealers but against retail dealers also. In order to over all such orders it would be desirable to refer generally to the orders issued to the contrary by a competent authority. The revised draft notifications provide accordingly.

Id/- P.N.M.
27/2.

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) No. 1504, dated the 27th February 1943.

4-Cs.

M.V.V.
8/7.

NOTIFICATION.

Finance Department (Supply),
Bombay Castle, 1943.

No. 310,- In exercise of the powers conferred by clause (a),(b) and (f) of sub-rule (2) of rule 81 of the Defence of India Rules, the Government of Bombay is pleased to amend Government Notification, General Department No.30/2 dated the 10th June 1942 as follows, namely:-

(1) In clause (1) in the said notification for the words "maximum wholesale prices" the words "ex-factory price shall be substituted , and

(2) In clause (2) of the said notification, after the word "that " the following shall be inserted, namely:-

"subject to any orders to the contrary issued by a competent authority under the Defence of India Rules and for the time being in force."

By order of the Governor of Bombay,

Secretary to Government.

4-Cs.
M.V.V.
8/7.

NOTIFICATION.

Finance Department (Supply),
Bombay Castle, 1943.

No. In exercose of the powers conferred by clauses (a),(b) and (f) of sub-rule (2) of rule 81 of the Defence of India Rules, the Government of Bombay is pleased to amend Government Notification, Finance Department(Supply) No.30 dated the 27th October 1942 as follows, namely :-

(1) In clause (1) in the said notification for the words "maximum wholesale prices" the words "ex-factory prices" shall be substituted, and

(2) In clause (2) of the said notification, after the word "that"the following shall be inserted, namely:-

"subject to any orders to the contrary issued by a competent authority under the Defence of India Rules and for the time being in force."

By order of the Governor of Bombay,

Secretary to Government.

4-Cs.

M.V.V.
8/7.

Office of the R.L.A.

There revised draft notifications in place of the F.D. D.F.A.I and II are sent herewith.

2. Rule 116(1) of the Defence of India Rules given power to Government to pass an order requiring any person to furnish to any specified authority or person any such information as may be specifed in the order. There is nothing in this rule to prohibit the Government from requiring any person to furnish any specified information at regular intervals. There is therefore no objection to calling upon a person to sent information periodically.

3. Rule 116(1) empowers Government to call for infor-mation which it considers necessary or expedient in the public interest to obtain or examine. As the rule expressly refers to public interest there is no objection to referring to it in an order thereunder as the object for which the information in required. The Defence of India Rules are made under section 2 of the Defence of India Act, 1939. It is true that sub-section (1) of section 2 does not expressly refer to "public interest" as one of the onkects to secure which rules can be made thereunder but the maintenance of public order and maintaining supplies and services essential to the life of the community referred ti ub sub-section (1) of section 2 are obviously in the public interest and therefore any informa-tion called for to secure any of these objects would be in the public interest. Rule 116(1) which gives power to Government to call for inforamtion which it considers necessary in the public interest would therefore be a perfectly valid rule and that being so, there would be no objection to mentioning "public interest" as the object for which any inforamtion is called for in an order made thereunder. How-ever ex majora cautela, the preamble in the draft order referring to public interest has been omitted. Its omission will not affect the validity of the proposed order.

Id/- P.N.M./2.3

Remembrancer of Legal Affairs.

4-Ca./M.V.V./8.7 U.R. to F.D. (Supply) No.1557, dt. 2.3.43.

Office of the R.L.A.

Attention is invited to R.L.A's opinion No. 5024, dated 19th June 1942, with which the Advocate General has agreed. As stated in paragraph 3 of that opinion requisitioning of property merely means taking immediate possession of the property for certain purposes. It does not divest the owner of any of his inherent rights; it merely suspends during the period of requisition some of the owner's rights such as his right to let. Therefore if the owner has leased his property before it has been requisitioned the owner's rights under the lease in respect of that property are not extinguished and will revive after the period of requisition expires unless there is anything contrary in the terms of the lease. In short, the lease in respect of the property will revive and the landlord and the tenant will both be bound by the terms of the lease forthe unexpirted period thereof and this is true both in the case of short term leases and long term leases. If the intention is to enable the tenant to disclaim short term leases, as suggested by the Collector of Bombay at page 17 ante., it would be necessary to undertake legislation on the lines of the English law viz. The landlord and Tenant (Requisitioned Land) Act, 1942.

Id/- P.N.M.
9/3.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 117-Confl. dated the 9th March 1943.

4-Cs.

M.V.V.
8/7.

Office of the R.L.A.

First alternative:- The proposal under this alternative is to notify cotton as an "essential commodity" under clause (3) of rule 34 of the Defence of India Rules and then take action against the East India Cotton Association under Rule 38(1)(a). Clause (3) of rule 34 defines "essential Commodity" as meaning food, water, fuel, light, power or any other thing essential for the existence of the community which is notified in this behalf by Government. Rule 3 of the Defence of India Rules provides that the General Clauses Act, 1897, shall apply to the interpretation of the rules as it applies to the interpretation of a Central Act. Under section 3 (21) of the General Clauses Act 'Government' includes both the Central Government and any Provincial Government. It would therefore be competent for the Provincial Government to notify 'cotton' as an essential commodity under clause (3) of rule 34 of the Defence of India Rules. As soon as cotton is notified as an essential commodity under rule 34(3) any act which is intended or is likely to impede, delay or restrict the supply or distribution of any cotton will be a prejudical act within the meaning of rule 34 (6). If therefore the East India Cotton Association decides without any lawful authority or excuse to close its trading, then on the assumption of the necessity of the forward trading as explained in F.D. noting , it will be guilty of an offence under ~~xxdx~~ rule 38(1)(a).

2. As there is no question of the issue of any notice under rule 38(1)(a) it is not clear what F.D. means by service of a notice under the rule on a date subsequent to the date of the resolution of the East India Cotton Association closing its trading. Presumably F.D. wants to know whether the Association would be guilty of an offence under rule 38(1)(a) if it has already decided to close its trading on a date which is prior to the date on which cotton is notified as an essential commodity; the answer is still in the affirmative. Once cotton is declared to be an essential commodity, the Association can no longer without any lawful authority or excuse continue to close its trading

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trading; and in order to escape the consequences of rule 38(1) it will have to rescind its resolution closing its trading.

3. Second alternative :- Rule 81(2)(c) gives power not only to the Central Government but also to the Provincial Government to provide by an order for regulating the carrying of any undertaking engaged in, or capable of doing work appearing to the Government essential to any of the purposes mentioned in the rule. From the objects set out on pages 1-6 of the Memorandum of the East India Cotton Association, it will be apparent that the E.I.C.A. is an undertaking within the meaning of rule 81(1) of the Defence of India Rules. This view is also supported by the Government of India letter No. P. & S.C. 259/42 dated 22.10.42. The Association carries on trade or business and it is immaterial that under Article 72 of the Article of the Association its property, capital and income has to be applied solely towards the promotion of the objects of the Association and not portion thereof is to be paid by way of bonus or otherwise to the members except in the case of its winding up. It would therefore be feasible to take action as proposed under this alternative.

Fifth alternative:- Under section 3(1) of the Bombay Options Cotton Prohibition Act, 1939 (Bom. XXV of 1939), it is open to the Provincial Government to make any be-law in respect of any of the matters specified in section 6 of the Bombay Cotton Contracts Control Act, 1932 other than clauses (a) and (1) of sub-section (2). Although, under sub-section (2) the making of such by-laws is subject to the condition of previous publication, under the proviso this condition can be dispensed with, if Government is of opinion that in the interests of trade it is necessary to make any by-law forthwith. The point taken by F.D. , namely whether such a by-law can be applicable with retrospective effect, that is to say whether such by-law can invalidate the closure of the x market effected by a resolution prior to its making, is not clear. Any by-law made by Government under section 3 of the Bombay Act XXV of 1939

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can be so framed as to invalidate any such closure and require the market to remain open on such days and at such hours as may be desired. There will be not difficulty by reason of the fact that a resolution of the Board has already imposed a closure. No amendment of the Act for the purpose appears to be necessary. It is suggested that in this case, the simplest and most appropriate course would be to take action under section 3 of the Bombay Options in Cotton Prohibition Act, 1939.

5. Para 5 of the F.D. note:- Revised draft Orders are sent herewith. The first Order declaring cotton to be an essential commodity is of a general nature, while the second order affects a class of persons, namely, the proprietors of wholesale establishments. Notice of these Orders can be published in such manner as the Government and the Commissioner of Police as the case may be consider best suitable. There is however no legal objection to serving also individual notices (see E.R.L.A's opinion No. 342-Confl. dated 12-8-1942).

Id/- P.N.M.
16/3.

Remembrancer of Legal Affairs.

U.R. to F.D. No. 134-Confl. dated the 16th March 1943.

4-Cs.

M.V.V.
8/7.

Office of the R.L.A.

The question for R.L.A.'s consideration is whether a person who is convicted of profiteering under the Defence of India Rules can be compelled to affix in front of his shop/notice in the prescribed manner indicating the offence committed by him and the punishment to which he has been sentenced.

2. Clause (b) of rule 81(2) of the Defence of India Rules gives power to Government to make an order providing for controlling the prices or rates at which articles or things of any description whatsoever may be sold or hired. Under this clause Government can fix the maximum prices or rates at which anyx articles or things may be sold and any person selling any such articles or thing at a price or rate exceeding the maximum price or rate fixed by Government is liable to be prosecuted and convicted for contravention of the order fixing the maximum prices or rates. No order can be made under this clause requiring any person to affix in front of his shop a notice indicating the offence committed by him and the punishment to which he was sentenced. Clause (f) of rule 81(2) empowers Government to make orders to provide for any incidental and supplementary matters for which Government thinks it expedient for the purposes of an order made under the rule to provide. Any order compelling any person to affix any such notice in front of his shop cannot be held to be an order for any such incidental and supplementary matters and will not therefore be competent under this xprovision. There is also no other provision in the Defence of India Rules under which such an order can be made.

Id/- P.N.M.
16/3.

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No. 1956, dated the 16th March 1943.